

SERVED: April 23, 1993

NTSB Order No. EA-3868

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of April, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12807
v.)	
)	
TPI INTERNATIONAL AIRWAYS, INC.,)	
)	
Respondent.)	
)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice,¹ perfected

¹Section 821.48(a) provides as follows:

"§ 821.48(a) Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

by the filing of a timely appeal brief. We will grant the motion.

The record establishes that respondent filed a timely notice of appeal from the oral initial decision the law judge rendered on January 12, 1993, but it did not file an appeal brief within 50 days after that date; that is, by March 3.² Respondent's explanation for that failure is that it mistakenly believed that it had 50 days from the date it filed a notice of appeal (i.e., January 20) to file an appeal brief.

Respondent's reason for not filing an appeal brief on time, namely, that it (that is, respondent's president) was confused as to the applicable time period, does not serve to excuse the missed deadline. See, e.g., Administrator v. Near, 5 NTSB 994 (1986)(Unfounded mistake as to filing requirement does not constitute good cause).³ Although respondent cites various circumstances which are asserted to have produced the confusion, its mistake appears to have resulted from incorrect assumptions it made about when the brief was due, not from any erroneous advice received from the Board. In the absence of good cause for respondent's noncompliance with the time limit for filing an appeal brief, dismissal of the appeal is required by Board precedent. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

²The law judge affirmed an order of the Administrator revoking respondent's Part 121 Air Carrier Operating Certificate (No. TP1A075B) pursuant to sections 121.51(a)(1) and 121.59 of the Federal Aviation Regulations. While respondent does not deny that it does not meet the requirements of those provisions, in that it no longer has the aircraft, personnel, or facilities to enable it to safely provide service, it argues that the FAA is responsible, for a variety of reasons, for its current inability to do so. Respondent's appeal brief, however, filed one week late on March 10, 1993, identifies no legal basis for respondent's position that the law judge erred in concluding that the Board lacked authority to review alleged improprieties by FAA personnel in connection with prior certificate actions that were not appealed to the Board.

³The record reflects that respondent had been furnished a copy of the Board's Rules of Practice when it originally filed an appeal from the Administrator's order. Although respondent acknowledges that it was also given a copy of relevant appeal rights at the end of the evidentiary hearing held by the law judge, that information was misplaced.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.